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MAILED

DEC 09 2010

OFFICE OF PETITIONS

In re Patent No. 7,695,690	:	DECISION ON REQUEST
Taylor et al.	:	FOR
Issue Date: 04/13/2010	:	RECONSIDERATION OF
Application No. 10/074,209	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 02/12/2002	:	
Atty Docket No.	:	
149-0007-3	:	

This is a decision on the petition filed on May 7, 2010, under 37 CFR 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred nine (509) days.

The petition to correct the patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of three hundred fifty-five (355) days.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on February 13, 2005, and ends on February 13, 2007, the day before the first RCE was filed, and is 731, not 732 days as asserted by patentee. See 35 U.S.C. 154(b)(1)(B)(i). Additionally, any time consumed by appellate review is not included in the calculation of 37 CFR 1.702(b). See 35 U.S.C. 154(b)(1)(B)(ii). On September 14, 2006, a notice of appeal was filed. On February 14, 2007, the RCE was filed. Accordingly, the excluded period is the period from the date the notice of appeal was filed until February 13, 2007, the date before the date the RCE was filed, or 153 days. Considering the overlapping period of 237 days beginning on July 22, 2005, the day after the date four months after the date a reply was filed, and ending on March 15, 2006, the date an Office action was mailed, the non-overlapping "B" delay period is 341 (731 – (153 + 237)) days.

Accordingly, no change will be made to the patent term adjustment of 355 days (453 days Office delay + 341 days three years delay – 439 days of applicant delay) days indicated on the face of the issue patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

A handwritten signature in black ink, appearing to read "D. Wood", is positioned above the printed name.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions